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SUBJECT: BOSNIA: BRCKO WORKING GROUP DRAFTS NATIONAL LAW

REF: A. SARAJEVO 1499

[1](#)B. SARAJEVO 1772

[1](#)C. SARAJEVO 2199

Classified By: Ambassador Douglas L. McElhaney. Reasons 1.4 (b) and (d).

[1](#)1. (U) SUMMARY. In the September 27-28 session of the Brcko District Working Group, participants drafted and nearly reached consensus on the text of a national law on Brcko's status within Bosnia. The law, which addresses Brcko's representation in Bosnia and Herzegovina's state institutions, was a key goal identified by the working group at its June meeting. Three main issues -- Brcko's access to the constitutional court, a mechanism for ensuring Brcko's interests are taken into consideration when competencies are transferred to the state, and its number of non-voting representatives in the BiH Parliament -- were the major focus of the negotiations. In the end, the group agreed to concrete language on the last two and will return to the issue of Brcko's constitutional court access following a period of consultation. END SUMMARY.

[1](#)2. (U) The Brcko District Working Group (the Working Group), consisting of representatives from the Council of Ministers (CoM) and Brcko District, and observers from the Office of the High Representative in Sarajevo (OHR-Sarajevo) and the Brcko District Final Award Office (BFAO), held its third session on September 27 and 28. The goal was to draft and agree on the text of a national law to define Brcko's relationship to the state. As the facilitators of the Working Group, the Embassy (in cooperation with the Office of the Legal Advisor) compiled and tabled a draft national law in advance. As we anticipated, three contentious issues resulted in a long, tense, and technical negotiating session. In the end, all parties agreed to all but one provision in the draft, recognizing that further consultation is required to determine precise language for Brcko's access to the Constitutional Court.

ONE TOUGH NEGOTIATING SESSION

[1](#)3. (U) The Working Group's Action Plan, agreed to at its June 2006 meeting (Ref A), committed it to drafting a national law addressing Brcko's relationship with and representation in Bosnia's state-level institutions. The Action Plan also outlined the national law's essential elements, such as Brcko's relationship with the Council of Ministers, the BiH Parliament, and the Constitutional Court. This broad

consensus, reached in June, allowed the September Working Group to focus its energies on the exact scope and means for such representation. Much of this went smoothly, particularly during the first day when the Working Group sought to build quick consensus on the less contentious elements of the draft national law.

14. (U) On the second day, however, the Working Group tackled the highly contentious subject of when and how Brcko's interests would be taken into consideration when competencies, currently exercised at the local level, were transferred to new state level institutions as part of the broader process of building the state-level institutions necessary to facilitate Bosnia's integration into Euro-Atlantic institutions. Brcko District sought what amounted to a veto over all transfers of competencies. Other Working Group members thought Brcko should be consulted (vice having the right to consent) only on transfers of competencies that directly affect the governing of the District. A key point of concern for Brcko was the District's involvement in the decisions of state-level financial institutions, such as the Indirect Taxation Authority and the National Fiscal Council (Ref B).

15. (U) To resolve the impasse, OHR-Sarajevo tabled a proposal that would allow Brcko to review, and possibly amend draft legislation, or amendments to existing laws, that relate to matters falling within responsibilities transferred to state-level institutions. The mechanism involved review of legislation that is potentially harmful to the District's interests by a Joint Commission. The legislative process would be suspended during the review. Parties readily agreed on the structure and process of the Joint Commission, but strongly disagreed on its scope. Brcko accepted that the mechanism was major concession by the CoM, but sought to

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expand it in a manner unacceptable to other Working Group members. This was the touchiest moment in the negotiations; parties were increasingly frustrated with what, in their view, were unrealistic demands from the Brcko negotiating team. The impasse was broken by a compromise proposed by the Brcko District Supervisor, albeit a compromise only grudgingly accept by Brcko District.

16. (U) Following the Supervisor's compromise, the Working Group discussed a key remaining issue -- Brcko's access to the Constitutional Court. All parties agreed that Brcko's access to legal remedy would ideally be through a constitutional amendment. However, the Working Group decided to temporarily address this through the draft law. The core issue was not whether Brcko should have access, but how, with OHR Sarajevo arguing that Brcko's proposed solution was unconstitutional. At this point, a tired and frustrated working group agreed not to hash this out and to revisit it following outside consultations.

COMMENT AND NEXT STEPS

17. (U) The draft national law agreed to by the Working Group contains several mechanisms that provide for Brcko's representation in state level institutions and ensure that its interests are taken into consideration when competencies are transferred to the state. This includes:

- Three non-voting representatives from Brcko District in the House of Representatives of the BiH Parliamentary Assembly (HoR);
- A Standing Committee for Brcko District within the HoR;
- Brcko District liaison from the Council of Ministers (CoM) and all of the state-level Ministries;
- A Brcko District Office (BDO) within the CoM. The BDO is already up and running but does not yet have a legal basis. Embassy efforts to secure passage to amendments to the Law on the CoM that would have rectified this problem were derailed

by Serb opposition on September 18 (Ref C), and;
-- The Joint Commission mechanism.

18. (C) Now that we have a draft law, we will have to get it through the Council of Ministers and the BiH Parliament. This will not be easy. The Working Group will soon start shopping around the law in order to build political support. We will have to explain Brcko's unique situation to parliamentarians and political party leaders, many of whom will worry that our law turns Brcko into a third entity. This will involve an educational campaign about the Final Award, which many politicians do not understand, and explaining why it is in the state's interest to support legal protections for Brcko District. Our goal is to pass the law by early 2007 to allow ample implementation time before the projected June 2007 OHR closure.

19. (C) As we move forward, we will need to guard against attempts by the parties to walk back from the compromises to which they agreed. Brcko District may argue for even stronger protections, even though the law, in its current form, is actually quite generous. It provides ample access to BiH institutions through the Brcko District Office, three Brcko representatives in the BiH HoR, the Standing Committee on Brcko District, and a robust consultation mechanism for transfers of competencies to the state. Through the Working Group process, Brcko District has sought a guaranteed outcome, in the form of what amounts to a legislative veto. Instead of a veto, Brcko District must learn to lobby on their own behalf through the representation mechanisms granted to them in this draft law.

MCELHANEY